1-12-2009

State v. Hartshorn Order Granting Motion Dckt. 33914

In the Supreme Court of the State of Idaho

STATE OF IDAHO,	)	ORDER GRANTING MOTION TO AUGMENT RECORD AND KEEP SUSPENSION OF BRIEFING SCHEDULE IN PLACE
Plaintiff-Respondent,	)	
v.	)	
	)	Supreme Court Docket No. 33914-2007
CURTIS GLENN HARTSHORN,	)	(33915-2007/33916-2007/33917-2007)
	)	
Defendant-Appellant.	)	Bonneville County District Court Nos. 2006-5769 (2006-14327/ 2006-17236/2006-19594)

A MOTION TO AUGMENT RECORD AND MOTION TO KEEP SUSPENSION OF BRIEFING SCHEDULE IN PLACE with attachment was filed by counsel for Appellant on November 24, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT RECORD be, and hereby is, GRANTED and the District Court Reporter shall prepare and lodge the transcript listed below with this Court within twenty-eight (28) days of the date of this Order and the District Court Clerk shall immediately serve counsel and file the transcript with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the February 12, 2008, hearing on Appellant's Motion to Withdraw his plea in Bonneville County Case No. CR-2006-19594.

IT FURTHER IS ORDERED that the augmentation record shall include the documents listed below, items which were NOT submitted with this Motion and not contained in this record on appeal, and the District Court Clerk shall submit to this Court the requested documents at the same time as the transcript listed above:

1. Court Minutes from the February 12, 2008, hearing on Appellant's Motion to Withdraw his plea in Bonneville County Case No. CR-2006-19594; and
2. The district court's March 20, 2008, Memorandum Decision denying Appellant's Motion to Withdraw his plea in Bonneville County Case No. CR-2006-19594.

IT FURTHER IS ORDERED that proceedings in this appeal shall remain SUSPENDED until the transcript and the requested documents listed above are filed with this Court, at which time the due date for filing Appellant's Brief shall be reset.

DATED this 12th day of January 2009.

For the Supreme Court

Stephen Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Jack Fuller
Court Reporter Tom McMinn

LAW CLERK

AUGMENTATION RECORD

In the Supreme Court of the State of Idaho

STATE OF IDAHO, Plaintiff-Respondent, v. CURTIS GLENN HARTSHORN, Defendant-Appellant.	)))))))))	ORDER GRANTING MOTION TO AUGMENT THE RECORD Supreme Court Docket No. 33914-2007 (33915-2007/33916-2007/33917-2007) Bonneville County District Court Nos. 2006-5769, 2006-14327, 2006-17236, 2006-19594

A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Appellant on June 12, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Motion to Withdraw Alford Plea (CR-06-19594), file-stamped October 1, 2007;
2. Minute Entry (CR-2006-19594), dated February 12, 2008;
3. Order Re: Motion to Withdraw *Alford* Plea and Objection to Memorandum Decision (CR-2006-19594), file-stamped March 20, 2008; and
4. Memorandum Decision Re: Motion to Withdraw *Alford* Plea and Objection to Memorandum Decision (CR-06-19594), file-stamped March 20, 2008.

DATED this 24th day of June 2009.

For the Supreme Court

Stephen Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORIGINAL

Curtis G Hartshorn
Full Name/Prisoner Name

ISCI
P.O. Box 51
Boise, Idaho 83707
Complete Mailing Address

Plaintiff/Defendant
(circle one)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT STATE OF IDAHO BONNEVILLE COUNTY

STATE OF IDAHO
Plaintiff/Petitioner,
(Full name and prisoner number.

vs.

CURTIS G. HARTSHORN

Defendant/Respondent(s),
(Full name(s). Do not us et. al.)

CASE NO. CR-06-19594

MOTION TO WITHDRAW ALFORD PLEA

COMES NOW, Curtis G. Hartshorn, Plaintiff/Defendant (circle one) in the above entitled

MOTION TO WITHDRAW ALFORD-PLEA, Moves this Honorable Court to grant the above mentioned case number and Defendant to withdraw previously entered ALFORD plea that was entered on December 19, 2006, pursuant to I.C. 19-1714

Revised 10/24/05

District court may, after judgement, grant motion for leave to withdraw plea of guilty and substitute plea of not guilty where plea of ~~not~~ guilty (Alford) was not made voluntarily or with full understanding of nature of act. STATE V Raponi, 32 IDAHO 368, 182 P. 855 (1919) STATE V. Arnold, 39 Idaho 589, 229 P. 748 (1924)

Discretion to allow plea of guilty to be withdrawn should be liberally exercised. State V. Poglianich, 43 IDAHO 409, 252 P. 177 (1927)

The withdrawal of a guilty plea is a discretionary matter with the trial court and that discretion should be liberally exercised. STATE V. JACKSON, 96 IDAHO 584, 532 P. 2d 926 (1975).

The defendant in the above mentioned cause, after pre-trial discussions with the defense lawyer and prosecuter, was told that if he didn't plead guilty to grand theft he was to be charged with the persistent violator. The defendant stated several times that he wasn't guilty of the charge of grand theft. The plea was not made voluntary and the defendant didn't have the full understanding of nature of the act.

Furthermore, defendant did not intend to commit a theft. The defendant was told by Casey Wheeler, an employee at the time, that we have permission to pay a few bills on the internet as long as we paid it back. The bills were paid, and defendant gave the money charged to Mr. Wheeler to pay the owner of the card.

Respectfully submitted this 24th day of September 2007.

Curtis Hartshorn
Plaintiff/Defendant (circle one)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24th day of September, 2007, I mailed a true and correct copy of the Motion to Withdraw Alford Plea via prison mail system for processing to the U.S. mail system to:

Bonneville County Court Clerk
605 N Capital
Idaho Falls, Idaho 83402

Curtis Hartshorn
Plaintiff/Defendant (circle one)

cont. from Pg 3 of Motion to withdraw Alford plea.

The defendant committed no theft. Casey Wheeler was the one that brought the card to work for us to use. The card was given to him from the owner of the card. Please see police report attached. (attachment A).

Where one rightfully in possession of personal property, subsequently conceives the intent of appropriating it, he is not guilty of larceny State v. Rigsp., 8 Idaho 630, 70 P 947 (1902)

Pursuant to IC 19-2403, the word "intentional" as used in Penal laws is held to import evil intent and unlawful purpose State v. Peters, 43 Idaho 564, 253 P 842 (1927)

Decisions under prior law. The court adequately instructed the jury on affirmative defense where the defendants theory of the case where the jury was told it could take into consideration whether or not the defendant honestly believed that he was entitled to spend and use monies in the manner in which he did under his authority, and if a reasonable doubt as to whether the defendant appropriated the funds within the scope of his authority as personal representative, a verdict of not guilty should be returned. State V. Boag, 118 Idaho 944, 801 P 2d 1295 (CT APP 1990)

Pg 3 cont. (1)

cont. from page 3

Defendant contends that the sentencing court, after a alford plea was accepted, did not inquire fully to the facts of the charge.

Pursuant to Rule 33, ICR, to enter a valid alford plea for purposes of triggering a duty upon the court to inquire into the factual basis of a plea, a defendant or counsel must make the court aware of the defendants refusal to admit to the acts charged. State V. Dyl, 124 Idaho 250, 858 P. 2d 789 (Ct App 1993)

Furthermore defendants Constitution rights have been in violation of due process and equal protects under law.

Pursuant to Rule 33 under subsection (C.) a plea of guilty may be withdrawn after sentencing only to correct a manifest injustice and the defendant has the burden of demonstrating a manifest injustice. An established abridgement of a constitutional right is deemed a manifest injustice as a matter of law State V. Detweiler, 115 Idaho 443, 767 P. 2d 286 (1989

Pursuant to Rule 35, ICR, a sentence may represent an abuse of discretion if it is shown to be unreasonable upon the facts of the case. State V. Araiza 109 Idaho 188, 706 P. 2d 77. State V. Hassett, 110 Idaho 570, 716 P. 2d 1342 (Ct App 1986

page 3 continued (2)

cont. from page 3

On December 19, 2006, defendant was taken to court from jail for what he thought was to withdraw his guilty pleas. Defendant was approached by his lawyer, public defender, Jeremy Stafford and he stated that if I was ready to be sentenced instead of waiting for another PSI to be performed, then I could be sentenced at that time without having to wait in jail for another PSI to be done. So the defendant said yes. The defendant was not told by counsel the severity of the consequences of being sentenced that day. Nor was he ever told that the state had the burden of proving intent (please see attach D) Pursuant IC 18-2403, Guilty Plea - Where, when the guilty plea was entered, the defendant had not been told that if the case were to go to trial, the state would have to prove the specific intent and knowledge required for a conviction under this section, and no prejudice to the state was shown, the defendant was permitted to withdraw his guilty plea. State v. Henderson, 113 Idaho 411, 744 P.2d 795 (ct. app 1987)

cont. page 3.

In closing, defendant insists he is not guilty of any crime pertaining to the use of the credit card. Please refer to the police report attached and marked as A B & C.

Mrs Beverland initially stated when asked if she wanted to press charges and she was unsure at the time because she didnt want to get her friend in trouble, Casey Wheelis. (ATTAC A) Nobody stole the card from Ms. Beverland according to her own statement

There lacks all probability of intent to deprive anyone of their possessions and defendant asks this court to withdraw Alford plea and drop charge for Grand Theft. or at least drop the charge to lesser offense pursuant to the grading of Theft. To wit, I.C. 3124, - IC-18-3125, IC 18-3128

Defendant is also prepared to file a motion under Rule 35 ICR if necissary for correction of an illegal sentence for being charged under the wrong statute which makes it illegal, as pertaining to the length of the sentence.

Pg. 3 cont (4)

Cont. page 3

In Idaho there is no general obligation to inquire into the factual basis of a guilty plea. However, such an inquiry should be made if a plea, pursuant to North Carolina v. Alford, 400 US. 25, 91 S.Ct. 160, 27 L. Ed. 2d. 162, (1970), is accepted, or if the court recieves information before sentencing which arises an obvious doubt as to guilt. Amerson v. State, 119 Idaho 994, 812 P. 2d 301 (Ct. App. 1991)

Defendant wrote to the district court before sentencing, to withdraw pleas (attachment D) on December 4, 2006. When defendant arrived in court to withdraw all pleas, His counsel said if I wanted to get it over with then he could be sentenced that day. (see attachment 'D')

Pursuant to IC §19-1714 - Withdrawl of plea - District court may, after judgement, grant motion for leave to withdraw plea of guilty and substantiate plea of not guilty where plea of guilty was not made voluntarily or with full understanding of nature of act. State v. Raposi, 32 Idaho 368, 182 P. 855 (1919); State v. Pogliancich, 43 Idaho 409, 252 P. 127 (1927).

ERL

Incident / Investigation Report

Bonneville County Sheriff's Office

UCA: 2006-06309

Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer *(363LLM) MOORE, LYNN LEE*

rights, he signed the form and agreed to talk to us.

A summary of the interview is as follows;

During the interview Mr. Hartshorn told me that he had found the drivers license and social security card that belonged to Gene Salcido at the bus stop in the bathroom. Mr. Hartshorn said he did not know how the ladies drivers license got in his wallet and said he did not use any of the i.d.`s. Mr. Hartshorn continued to say he did not use them and would only say he did not know.

Mr. Hartshorn denied stealing any wire. Mr. Hartshorn denied wxiting any checks and said that his checkbook had been stolen.

I asked Mr. Hartshorn what his intentions was this date at Interstate Recycling. Mr. Hartshorn said that he was not going to hit us with that and he was just trying to make us "flinch" so he could get around us. He said he wanted to get the back door open so he could run but he couldn`t get it open.

I returned to the office and attempted to locate reports involving the individuals whom cards were found on Mr. Hartshorn. I was unable to locate any reports with the individuals. I located a possible telephone number for Kimberly Walker; I called and left a voice message on an answering machine asking her to return my call.

On the Internet I located a possible number for Cheryl Beverland whose debit card was found on Hartshorn.

On 10/27/2006 I called and left a message for Cheryl.

Cheryl later returned my phone call. I asked her if she was missing a U.S. Bank debit card, she told me she was. Cheryl told me something to the affect; that she had given her card to a friend of hers over a year ago, to use to sell some items for her on EBAY. He was going to post the items on the computer at American Auto (it must be noted that Curtis Glenn Hartshorn`s business was American Auto). The friend later told her that American Auto had been broken into and the credit card was stolen out of the safe that had been in the business. Cheryl told me she did not want to tell me the name of her friend for fear of getting him in trouble. Cheryl continued to tell me that she later received a check from her friend from Hartshorn c/o American Auto for 5330.00 because he felt bad about the theft of the card. Cheryl told me that the check bounced. Cheryl continued to say that she had never met Curtis Glenn Hartshorn and he did not have permission to have her debit card. Cheryl said her card was used for numerous fraudulent charges on the Internet. Cheryl said she filed a report in Butte County. I asked Cheryl if she wished to pursue charges against Mr. Hartshorn, she said she wanted to think about it and call me back.

Cheryl called me back a short time later and told me she wanted to pursue charges against Hartshorn. She told me her friends name that she had given the card to was K.C. Wheeler. Cheryl said that K.C. had told her daughter that the safe had been broken into and her debit card taken. Cheryl said she did not know it had been used until she received her bank statement listing the charges. Cheryl again said she has never met Curtis Hartshorn and he did not have permission to have her card.

I have not received a phone call back from Kimberly Walker about her driver`s license.

I am still working on trying to locate the other people to see why Mr. Hartshorn had their property.

Attachment A

Incident / Investigation Report

Bonneville County Sheriff's Office

Case: 2006-07773

Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer *(363LLM) MOORE, LYNN LEE*

Supplement Type: INRE

Date / Time *10/27/2006 16:55*

2006-07773
Bonneville County Sheriffs Office
Summary Report
L. Moore

Summary:
On 10/26/2006 I had received anonymous information that Curtis Glenn Hartshorn was at Interstate Recycling located 3755 North Yellowstone in Bonneville County. I was aware that Mr. Hartshorn had warrants for his arrest (refer to case report 2006-06309). Deputy Byington and myself responded to Interstate Recycling. I contacted Mr. Hartshorn just inside the font door of the business. I recognized him as Curtis Glenn Hartshorn (he has been a suspect in several copper wire theft cases I have been working) I said to him, "how are you doing Mr. Hartshorn". Mr. Hartshorn denied that he was in fact Mr. Hartshorn. I explained to him that I knew he was in fact Mr. Hartshorn and asked for his identification. Mr. Hartshorn started to proceed towards the back of the business located to the north. (I had been in the business before and knew there was a back door to the business). Deputy Byington had taken a position outside to the back of the business as we had concerns that Mr. Hartshorn would try to run from us. I attempted to contact Deputy Byington on my portable radio to notify him of Mr. Hartshorn's movements, the battery on my radio was dead. Mr. Hartshorn attempted to try an open the overhead door but it was secured. At that time Deputy Byington had came inside the business and shouted to Hartshorn. Mr. Hartshorn turned and tried to run towards the front of the business. Deputy Byington and myself were able to step in his way and Mr. Hartshorn stopped and then walked around a pallet that contained stacks of red colored insulated copper wire. Mr. Hartshorn picked up one of the pieces of the wire, which was approximately five to six feet in length. (I later learned that the wire he picked up weighed eighteen pounds). Mr. Hartshorn held the wire over his shoulder (like someone holding a baseball bat preparing to swing), in a threatening manner towards us. Both Deputy Byington and myself ordered Mr. Hartshorn several times to drop the wire and get on the ground in which he would not comply. I had told Mr. Hartshorn we had a warrant for his arrest and we continued to tell him to drop the object. Mr. Hartshorn started to walk towards Deputy Byington still holding the wire in a threatening manner. Mr. Hartshorn stopped and then started to walk around the pallet in my direction still holding the wire over his shoulder. I felt in my mind that Mr. Hartshorn was trying to decide which officer to try and attack. I had my hand on my weapon and started to draw my weapon out of my holster and backed up to keep distance between us still ordering Mr. Hartshorn to drop the object. Deputy Byington had told Mr. Hartshorn that he was going to use pepper spray on him, Mr. Hartshorn still refused all orders to drop the object. Deputy Byington sprayed Mr. Hartshorn in the face with pepper spray. After several seconds Mr. Hartshorn dropped the object, still refusing orders to get down on the ground and place his hands behind his back. At that time Deputy C. Smith arrived and took Mr. Hartshorn to the ground and was able to get Mr. Hartshorn's arms behind his back. I placed handcuffs on him and double locked them. An ambulance was called to treat Mr. Hartshorn for the pepper spray and also Mr. Hartshorn had complained of a prior injury he had to his hand. Mr. Hartshorn was treated by the ambulance and then transported to the hospital to have his hand looked at.

During a pat down of Mr. Hartshorn there were several drivers licenses and a U.S. Bank debit card belonging to other people located on his person. Upon contact with Cheryl Beverland the owner of the debit card, she advised she had given the card to a friend of hers by the name of K.C. Wheeler to use to sell items on EBAY over a year ago. Cheryl advised the friend had access to a computer at American Auto, (it must be noted that Curtis Hartshorn is listed as the owner of American Auto in ILEADS). Cheryl told me that Wheeler told her that American Auto had been broken into and her card was stolen out of the safe that had been in the business. Cheryl said that card was used for numerous fraudulent charges on the Internet in which she filed

Attachment B

Bonneville County Sheriff's Office

Incident / Investigation Report

OCA: 2006003973

Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer *(363LLM) MOORE, LYNN LEE*

a report with Butte County. Cheryl said she received a check through her friend from Hartshorn for $330.00, Cheryl said the check was given to her because Hartshorn had said he felt bad about her card being taken. Cheryl told me she has never met Curtis Hartshorn and she never gave him permission to have her debit card.

Narrative:

On 10/26/2006 I received anonymous information that Curtis Hartshorn was at Interstate Recycling. I was aware that there were current warrants for Mr. Hartshorn's arrest. Mr. Hartshorn had been a suspect in several copper wire thefts I have been investigating. I was aware that one of his warrants was for Escape. Deputy Byington assisted me in responding to Interstate Recycling. Due to the fact one of his warrants was for escape I told Deputy Byington that I believed Mr. Hartshorn would try and run from us. Deputy Byington took a position outside to the back of the business, as I was aware there was a back door to the business. I stepped inside the front door of the business and I observed Mr. Hartshorn next to the counter. I asked Mr. Hartshorn how he was doing; he looked at me and said he was not Hartshorn. I explained to him that I knew he was and he continued to deny he was Hartshorn. I asked him for his identification and he said he had it and started to walk north towards the back of the business. I attempted to contact Deputy Byington to advise him of Mr. Hartshorn's movements. The battery on my portable radio was dead. Mr. Hartshorn proceeded to the overhead door and attempted to open it. Deputy Byington came inside the building to my location and yelled at Mr. Hartshorn. Mr. Hartshorn started to run towards the front of the business, we were able to block his path. Mr. Hartshorn then walked around a stack of red colored wire that was stacked on a pallet. Mr. Hartshorn picked up on one of the pieces of wire that was approximately five to six feet in length. Mr. Hartshorn immediately pulled the wire up an over his shoulder (in a position like a baseball bat he was getting ready to swing). The pallet was between Mr. Hartshorn and us. We ordered several times for Mr. Hartshorn to drop the object; Mr. Hartshorn refused to comply with the orders. I told Mr. Hartshorn we had a warrant for his arrest and to drop the object, he still refused. Mr. Hartshorn started to walk around the pallet towards Deputy Byington still holding the object over his shoulder in a threatening manner. Mr. Hartshorn then stopped and started back around the pallet towards my direction. I started to draw my weapon out of my holster and started to back up to keep distance between us and ordered him to drop the object. In my mind I felt that Mr. Hartshorn was trying to decide what officer to attack. Deputy Byington sprayed Mr. Hartshorn in the face with pepper spray. After several seconds Mr. Hartshorn dropped the object, Deputy Smith arrived and took Hartshorn to the ground and was able to get his hands behind his back. I placed handcuffs on Mr. Hartshorn and double locked them. An ambulance was called for Mr. Hartshorn for the use of the pepper spray to his face. Mr. Hartshorn had also complained of a prior injury he had to his hand. The paramedics treated Mr. Hartshorn for the pepper spray to the face. Deputy Hillier who had also arrived on scene transported Mr. Hartshorn to the hospital to be treated for his hand.

I took photographs of the pallet with the large wire on it. I also photographed the wire that Mr. Hartshorn had brought in to sell. While I was there employees with Interstate Recycling had collected the piece of wire that Mr. Hartshorn had picked up and they moved the pallet of wire. Employee Alfred Cote told me that he had weighed the piece of wire that Mr. Hartshorn had picked up and it weighed eighteen pounds. Since the piece of wire Mr. Hartshorn had used as an object had already been picked up, I requested another piece of the same wire that weighed eighteen pounds and was of similar length to collect as possible evidence. They provided me a piece of the same wire not the actual one, but weighing the eighteen pounds. I filled out a property receipt and gave it to them.

The vehicle Mr. Hartshorn was driving was parked in front of the business. The business advised they did not want the vehicle left in the parking lot Blocking the front of the business. I requested the next list wrecker. Detective Hudman and Detective Goody had arrived on scene. Detective Hudman filled out an impound

Attachment C

Mr Stafford, Judge St. Clair, Prosecutor

I am not happy with the outcome of my day in court.

I was under the understanding that my previous PSI would be used and I would be sentenced today. I didn't know it any one realize but I've got almost 300 days incarcerated and need I have the unit until Jan 22 07 to be adjudicated

I have a problem with pleading guilty to something I didn't do I felt like I was forced to do that. The prosecutor told me if I didn't plead the enhancement would be filed and the persistent violator also. That is a threat no matter how you slice it.

I want to retract my Guilty Pleas pertaining with CR-06-5769, CR-06-19594, CR06-19236, CR06-14327.

Also, I want to disqualify Jeromy Hoopes as my legal representation for conflict reasons I will continue Pro Se

Sincerely
Curtis Hutchison

Attachment "D"

ERL

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,	
Plaintiff,	Case No. CR-2006-19594
-vs-	MINUTE ENTRY
CURTIS GLENN HARTSHORN,	
Defendant.	

This matter came on for hearing on defendant's Objection & Verified Motion for Disqualification with Cause and Motion to Withdraw Alford Plea on February 12, 2008 at 9:30 A.M., before the Honorable Gregory S. Anderson, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Karen Konvalinka, Court Reporter, and Ms. Lettie Messick, Deputy Court Clerk, were present.

Mr. Randolph Neal appeared on behalf of the State.

The defendant appeared by telephone on his own behalf.

The Court noted that the defendant's motion for disqualification was resolved.

Mr. Hartshorn presented argument supporting his request for credit for time served. Mr. Neal argued in opposition to defendant's request for credit. Mr. Hartshorn presented additional argument supporting the motion.

The Court took the matter under advisement.

Mr. Hartshorn presented argument supporting his motion to withdraw his guilty plea. Mr.

Neal argued in opposition to defendant's motion. Mr. Hartshorn presented additional argument supporting defendant's motion to withdraw guilty plea.

The Court took the matter under advisement.

Court was thus adjourned.

Gregory S. Anderson

GREGORY S. ANDERSON
District Judge

c: Prosecutor
Curtis Hartshorn

THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

2008 MAR 20 PM 3:15

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

STATE OF IDAHO,

Plaintiff,

-vs.-

CURTIS GLENN HARTSHORN,

Defendant.

Case No. CR-2006-19004

ORDER RE: MOTION TO WITHDRAW *ALFORD* PLEA AND OBJECTION TO MEMORANDUM DECISION

This cause having come before this Court pursuant to Hartshorn's October 1, 2007, Motion to Withdraw *Alford* Plea and October 16, 2007, Objection to the Court's September 20, 2007, Memorandum Decision (motion for reconsideration), and this Court being fully advised in the premises, and good cause appearing;

NOW, THEREFORE:

Hartshorn's motion to withdraw *Alford* plea is denied.

Hartshorn's motion for reconsideration is denied.

DATED this 20th day of March 2008.

Gregory S. Anderson
GREGORY S. ANDERSON
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March 2008, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Curtis Glenn Hartshorn
ISCI Unit 14
Post Office Box 14
Boise, ID 83707

Bonneville County Prosecutor's Office
605 N. Capital Ave.
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By _____
Deputy Clerk

ERL

THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO, Plaintiff, -vs.- CURTIS GLENN HARTSHORN, Defendant.	Case No. CR-06-19594 **MEMORANDUM DECISION RE: MOTION TO WITHDRAW *ALFORD* PLEA AND OBJECTION TO MEMORANDUM DECISION**

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 18, 2006, Curtis Hartshorn was sentenced in Cases No. CR-2006-5769 for delivery of a controlled substance, CR-2006-14327 for escape, CR-2006-17236 for issuing a check without funds and CR-2006-19594 for grand theft. Each case is unrelated to the others.

In Case No. CR-2006-5769, the court revoked probation and imposed the original sentence of a three-year determinate term followed by an indeterminate term of seven years. The sentence is subject to 321 days credit for time served prior to sentencing.

In Case No. CR-2006-14327, the court sentenced Hartshorn to a one-year determinate term to be served consecutively to the sentence in Case No. CR-2006-5769. The sentence is subject to 113 days credit for time served prior to sentencing.

In Case No. CR-2006-17236, the Court sentenced Hartshorn to a determinate term of three years to be served concurrently with the sentence in Case No. CR-2006-5769. The sentence is subject to 113 days credit for time served prior to sentencing.

In Case No. CR-2006-19594, the Court sentenced Hartshorn to a minimum term of four years to be followed by an indeterminate term of eight years. The sentence is to

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be served concurrently with the sentences in Cases No. CR-2006-5769 and CR-2006-17236. The sentence is subject to 113 days credit for time served prior to sentencing.

On September 13, 2007, Hartshorn filed an identical motion for credit for time served in each of the listed cases.

On September 20, 2007, the court entered a Memorandum Decision Re: Motions for Credit for Time Served, which denied Hartshorn's motions.

Hartshorn filed a Motion to Withdraw *Alford* Plea on October 1, 2007.

On October 16, 2007, Hartshorn filed an Objection and Verified Motion for Disqualification W/Cause objecting to the September 20, 2007, Memorandum Decision.[1]

II. STANDARD OF ADJUDICATION

A. Motion to Withdraw *Alford* Plea

The decision to grant or deny a motion to withdraw a guilty plea rests in the discretion of the trial court. *State v. Dye,* 124 Idaho 250, 253, 858 P.2d 789, 792 (Ct. App. 1993).

B. Motion to Reconsider

"The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." *Jordan v. Beeks,* 135 Idaho 586, 592, 21 P.3d 908, 914 (2001); *Carnell v. Barker Management, Inc.,* 137 Idaho 322, 329, 48 P.3d 651, 658 (2002).

[1] An Order for Self Disqualification was entered on October 3, 2007 by Judge Tingey. On October 10, 2007, Judge Anderson was assigned this case. Consequently, Hartshorn's Motion for Disqualification is moot and need not be addressed in this decision. Hartshorn's Objection appears to be a motion for reconsideration and will be handled as such by this Court.

III. DISCUSSION

A. Motion to Withdraw *Alford* Plea

Rule 33(c) of the Idaho Criminal Rules provides:

> Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; *but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.*

(Emphasis added).

1. Voluntarily, knowingly and intelligently

a. Voluntary Plea

Hartshorn argues his *Alford* plea was not voluntarily entered. He states: "The defendant stated several times that he wasn't guilty of the charge of grand theft. The plea was not made voluntary and the defendant didn't have the full understanding of nature of the act." M. to Withdraw *Alford* Plea at 2. He also states: "The defendant was not told by counsel the severity of the consequences of being sentenced that day." M. to Withdraw *Alford* Plea at continued page 3.

"Manifest injustice will be found if the plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be entered voluntarily, knowingly, and intelligently." *State v. Huffman,* 137 Idaho 886, 887, 55 P.3d 879, 880 (Ct. App. 2002). The defendant bears the burden of demonstrating he should be allowed to withdraw the plea. *State v. Dye,* 124 Idaho 250, 254, 858 P.2d 789, 793 (Ct. App. 1993).

The Idaho Court of Appeals has explained:

> Before accepting a guilty plea, the trial court must satisfy itself that the plea is offered voluntarily, knowingly and intelligently. The plea must be entered with "a full understanding of what the plea connotes and of its consequence." In Idaho, the trial court must follow the minimum requirements of I.C.R. 11(c) in accepting pleas of guilty. *If the record indicates the trial court followed the requirements of I.C.R. 11(c), this is a prima facie showing that the plea is voluntary and knowing. The defendant then has the burden of persuasion to demonstrate a manifest injustice by establishing that the plea was induced by misapprehension, inadvertence or ignorance.*

State v. Hayes, 138 Idaho 761, 765, 69 P.3d 181, 185 (Ct. App. 2003) (emphasis added).

Rule 11(c) of the Idaho Criminal Rules provides:

> Acceptance of Plea of Guilty. Before a plea of guilty is accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:
>
> (1) The voluntariness of the plea.
>
> (2) The defendant was informed of the consequences of the plea, including minimum and maximum punishments, and other direct consequences which may apply.
>
> (3) The defendant was advised that by pleading guilty the defendant would waive the right against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses against the defendant.
>
> (4) The defendant was informed of the nature of the charge against the defendant.
>
> (5) Whether any promises have been made to the defendant, or whether the plea is a result of any plea bargaining agreement, and if so, the nature of the agreement and that the defendant was informed that the court is not bound by any promises or recommendation from either party as to punishment.

During the December 4, 2006, arraignment, the Court participated in the following dialogue with Hartshorn and his attorney, Jeromy Stafford:

Judge St. Clair: And in the 19594 case, you're charged with grand theft in count one and aggravated assault in count two. If you're convicted of the grand theft, you could be sentenced from one to fourteen years in prison, fined up to $5,000 and required to pay restitution. If you're convicted of count two, you could be sentenced up to five years in prison, $5,000 fine and restitution. All of these may require a contribution of $50 to the victim's relief fund. And if you're convicted of more than one count the sentences could be consecutive. Do you understand those potential penalties for conviction of any of these charges in these cases?

Hartshorn: Yes, I do.

. . .

Judge St. Clair: Mr. Hartshorn did you get a copy of the information in these three cases that describes the charges?

Hartshorn: Yes, I did.

Judge St. Clair: Did you read the informations?

Hartshorn: Yeah, I did.

Judge St. Clair: You have the right to have me read them to you out loud here in court. Would you like me to read them?

Hartshorn: No, sir.

. . .

Judge St. Clair: And in Case 19594 how do you plead to grand theft Mr. Hartshorn?

Hartshorn: Guilty.

Judge St. Clair: And the state is going to dismiss Ag Assault, is that right?

Larren Covert: Yes, your honor.

Judge St. Clair: We'll put it down a not guilty plea in that charge. So did you read and sign this plea agreement Mr. Hartshorn?

Hartshorn: Yes, I did.

Judge St. Clair: Did you read it?

Hartshorn: Yes.

Judge St. Clair: Do you understand it?

Hartshorn: Yes.

Judge St. Clair: Do you have any questions?

Hartshorn: No.

Judge St. Clair: This has a sentencing recommendation that the sentences be concurrent except the escape which must be consecutive and that the state would recommend six months fixed on escape. Do you understand that?

Hartshorn: Yes, I do.

Judge St. Clair: Do you understand that the state's recommendation as to sentencing would not be binding on me as to the proper punishment in these three cases?

Hartshorn: Yes.

Judge St. Clair: You understand that if I did not go along with the state's recommendation and gave you more severe sentences, you could not withdraw your guilty pleas and go to trial?

Hartshorn: Yes sir, I do.

. . .

Judge St. Clair: Mr. Hartshorn, are you on probation or parole?

Hartshorn: Yes, I am.

Judge St. Clair: Do you understand that a conviction in any of these cases would be a violation of that probation or parole?

Hartshorn: Yes, sir.

Judge St. Clair: Do you understand that you could have your parole revoked and your probation revoked as a result of more convictions in these cases?

Hartshorn: Yes, sir.

Judge St. Clair: Are you under the influence of any alcohol or any drugs at this time?

Hartshorn: No.

Judge St. Clair: Do you have mental or psychological problems that have a bearing on these cases?

Hartshorn: No.

Judge St. Clair: Did anybody pressure you into entering into any plea agreement?

Hartshorn: No.

Judge St. Clair: Are you pleading guilty freely and voluntarily?

Hartshorn: Yes.

Judge St. Clair: Is anybody forcing you to plead guilty?

Hartshorn: No.

Judge St. Clair: Did anybody promise you I would be easy on you if you pleaded guilty?

Hartshorn: No, sir.

Judge St. Clair: Did anybody promise you I would put you on probation if you pleaded guilty?

Hartshorn: No.

Judge St. Clair: Did anybody threaten you or people close to you to make you plead guilty?

Hartshorn: No.

Judge St. Clair: Other than the plea agreement, did anyone offer you any rewards of any kind?

Hartshorn: No, sir.

Judge St. Clair: Are you pleading guilty to these crimes based on your own free will and without pressure or influence from anybody whatsoever?

Hartshorn: Yes, sir.

Judge St. Clair: Do you understand that before sentencing I will have a pre-sentencing investigation completed resulting in a written report with your prior criminal record.

Hartshorn: Yes.

Judge St. Clair: Do you understand I will consider that at time of sentencing?

Hartshorn: Yes.

Judge St. Clair: Do you understand that by pleading guilty to these crimes you are giving up several very important constitutional rights, including the right to a jury trial on each of these crimes? The right to confront and cross-examine the state's witnesses and the right to call your own witnesses under oath?

Hartshorn: Yes.

Judge St. Clair: Do you understand you will have to give up your privilege against self-incrimination and give me the factual basis of these three crimes?

Hartshorn: Yes.

Judge St. Clair: Do you still wish to plead guilty?

Hartshorn: Yes, I do.

. . .

Judge St. Clair: Alright, then I find that you do understand the nature of these three crimes to which you have pleaded guilty. I find that you understand the consequences of these guilty pleas. I find there is a factual basis for each of the three guilty pleas. I find that they were freely and voluntarily made. I will accept the three guilty pleas. . . .

Transcribed by Court.

The plea agreement, signed by Hartshorn, stated:

> c. I understand that the crime of Grand Theft is a Felony, and is punishable as follows:

i. Imprisonment in the county jail for a term up to fourteen years;

ii. A fine of not more than five thousand dollars ($5,000);

iii. Restitution; or

iv. Any combination of fine, imprisonment, and restitution as listed above.

Plea Agreement at 3.

During the arraignment, Judge St. Clair complied with all the requirements of I.C.R. 11(c). The Court's dialogue with Hartshorn during the arraignment provides a prima facie showing that Hartshorn's *Alford* plea was voluntarily, knowingly, and intelligently made. Hartshorn acknowledged in the plea agreement that he was aware of the maximum sentence for Grand Theft. Hartshorn has not submitted any evidence that would indicate his plea was induced by misapprehension, inadvertence or ignorance. Therefore, Hartshorn has not rebutted the prima facie showing that his *Alford* plea was voluntarily, knowingly and intelligently made.

b. Persistent Violator Charge

Hartshorn appears to argue his *Alford* plea was coerced. He states: "The defendant, in the above mentioned cause, after pre-trial discussions with the defense lawyer and prosecuter, was told that if he didn't plead guilty to grand theft he was to be charged with the persistent violator." M. to Withdraw *Alford* Plea at 2.

In *Stone v. State,* 108 Idaho 822, 824-25, 702 P.2d 860, 862-63 (Ct. App. 1985), the Idaho Court of Appeals held:

> Stone . . . alleges that the prosecutor threatened to charge Stone as an habitual offender and represented that an additional twenty-six counts could be filed in federal court if he did not plead guilty. Stone, however,

> does not allege that these additional charges were groundless, only that they were not filed. It is clear from the record that Stone was aware his prior felony convictions made it possible for him to be charged by the state as a persistent violator and to receive a life sentence. *See* I.C. § 19-2514. He thus does not contend that the prosecutor's conduct was fraudulent. A prosecutor is at liberty to use the availability of filing additional, legitimate charges as a bargaining chip in plea negotiations. "A guilty plea induced by a prosecutorial ... promise to refrain from filing additional charges does not necessarily vitiate an otherwise voluntary plea." *State v. Swindell,* 93 Wash.2d 192, 607 P.2d 852, 855 (1980). "Defendants advised by competent counsel and protected by other procedural safeguards are presumptively capable of intelligent choice in response to prosecutorial persuasion, and unlikely to be driven to false self-condemnation." *Bordenkircher v. Hayes,* 434 U.S. 357, 363, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978). Stone admits his counsel was present when the "threats" were made. He does not allege any other facts which would cast a shadow on the voluntariness of his guilty plea. Stone was thus "presumptively capable of intelligent choice in response to prosecutorial persuasion." He has therefore not alleged facts which, even if true, would entitle him to relief. *See* Cooper v. State, supra.

The Idaho Court of Appeals has also stated:

> [T]here is a certain amount of coercion inherent in charging a defendant and bringing him before the court to declare his guilt or innocence. During plea bargaining, there is little chance of constitutionally excessive coercion, however, so long as the defendant is free to accept or reject the prosecutor's offers.

Garzee v. State, 126 Idaho 396, 399, 883 P.2d 1088, 1091 (Ct. App. 1994).

The prosecutor in this case was free to use the "threat" of a persistent violator charge as a persuasive tool when negotiating the plea bargain with Hartshorn. Hartshorn was represented by counsel and protected by various procedural safeguards. He was free to accept or reject the prosecutor's offers. Hartshorn's *Alford* plea is, therefore, presumed to have been entered voluntarily.

2. Factual basis inquiry

Hartshorn argues the court's acceptance of his plea was improper because the court "did not inquire fully to the facts of the charge." M. to Withdraw *Alford* Plea at

continued page 2.

The Idaho Court of Appeals has explained that with an *Alford* plea, not only must the plea be voluntarily, knowingly and intelligently made, but a fourth requirement must also be met:

> [A]n accused may voluntarily consent to the imposition of a prison sentence despite a professed belief in his or her innocence, as long as a factual basis for the plea is demonstrated by the state, and the accused clearly expresses a desire to enter such a plea. In Idaho, there is no general obligation to inquire into the factual basis of a guilty plea. However, such an inquiry should be made if an *Alford* plea is accepted, or if the court receives information before sentencing which raises an obvious doubt as to guilt.

Amerson v. State, 119 Idaho 994, 996, 812 P.2d 301, 303 (Ct. App. 1991) (citations omitted).

During the December 4, 2006, arraignment, the Court inquired into the factual basis of the grand theft charge against Hartshorn:

> **Judge St. Clair:** And how about the last case—this grand theft charge. What happened there?
>
> **Hartshorn:** I had my business. It was when I first started my business. A guy that was working with me; I needed to get some stuff off the internet and sell them. Supposedly his girlfriend's mother, which I've never met her, got a debit card. I paid 330 or 350 bucks. Ordered what I needed to order and that was all it was used. I got burglarized and we thought that that was stolen too. The card was supposed to have been just used the one time and then I was told it wasn't any good after that. Well, anyway I had it in my safe and they stole my safe, so I figured that was gone with it. Later when we moved out of the shop I found it. I put it in my wallet and that's where it's been. I don't know. I've been in and out of jail four or five times in the last year and nobody ever said anything until this time.

Stafford: Your honor, on this one we should probably do *Alford,* I think. He's disputing that he stole it, but the owner of the card is claiming that she didn't give him permission that to use it or have it so it's kind of a factual dispute. I think he's agreeing to plead guilty for the benefits of this plea agreement, getting the other charges dismissed, and due to the risk at trial with her coming in and saying that he didn't have permission to have it.

Judge St. Clair: Is that right Mr. Hartshorn?

Hartshorn: Yes, sir.

Judge St. Clair: And so you think that this Cheryl Beverland that she would be testifying against you with respect to this particular card?

Hartshorn: I guess so. She said it happened a year ago. It's been more like two-and-a-half years ago.

Judge St. Clair: But you had it? You had her card in your wallet?

Hartshorn: Yes, I did.

Judge St. Clair: When you were here in Idaho Falls, Idaho?

Hartshorn: Yes.

Judge St. Clair: On October 26, 2006?

Hartshorn: Yes.

Judge St. Clair: You didn't have any permission from her to have her card in your wallet?

Hartshorn: No.

Transcribed by Court.

The Court's inquiry into the factual basis for the grand theft charge against Hartshorn was sufficient to establish a basis for Hartshorn's *Alford* plea.

3. Specific Intent

Hartshorn argues he was never "told that the state had the burden of proving intent." M. to Withdraw *Alford* Plea at continued page 3. He cites *State v. Henderson,*

113 Idaho 411, 744 P.2d 795 (Ct. App. 1987), in support of his argument that he should have been informed that the state had the burden of proving intent. In *Henderson*, the defendant argued the trial court erred when it denied his motion to withdraw guilty plea. Henderson based his motion to withdraw guilty plea on the grounds he had not been informed, prior to entering the guilty plea, that the state needed to prove specific intent as an element of grand theft. The Court of Appeals stated:

> Before accepting a guilty plea, the court must satisfy itself that the plea is offered voluntarily, knowingly and intelligently. I.C.R. 11(c); *Fowler v. State,* 109 Idaho 1002, 712 P.2d 703 (Ct.App.1985). A voluntary plea cannot be made without disclosure to the accused of the intent element of a specific intent crime. *Sparrow v. State,* 102 Idaho 60, 625 P.2d 414 (1981); *Fowler v. State, supra*; *State v. Vasquez,* 107 Idaho 1052, 695 P.2d 437 (Ct.App.1985).
>
> We must examine the record of the proceedings at which the guilty plea was taken and the record of prior proceedings to determine whether the accused was adequately informed of the specific intent element. . . .
>
> . . .
>
> . . . Grand theft is a specific intent crime. . . .
>
> . . .
>
> As we have shown, the information itself did not specifically mention an intent to deprive or an intent to defraud. It did not allege that Henderson knew or had reason to know that the cashier's checks were false and forged and would not be paid when presented. Nothing in the record shows that, when the guilty plea was entered, Henderson had been told that if the case went to trial the state would have to prove the specific intent and knowledge required for a conviction under this statute. What Henderson's trial counsel may have told Henderson about elements of proof or possible defenses is not shown.

Id. at 412-413, 744 P.2d at 796-97. The court held Henderson must be permitted to withdraw his guilty plea.

In this case, the State filed an amended information accusing Hartshorn of Grand Theft on November 28, 2006. The amended information reads:

> **COUNT I, GRAND THEFT, Felony**
> **I.C. §§ 18-2403, 18-2407(1)(b)3**
>
> The defendant, CURTIS GLENN HARTSHORN, on or about October 26, 2006, in Bonneville County, State of Idaho, did wrongfully take, obtain, or withhold a financial transaction card from the owner, Cheryl Beverland, with the intent to deprive the owner of such property or to appropriate the same to himself. *(14 years, $5,000 fine, and restitution.)*

(Underlined emphasis added).

During the December 4, 2006, arraignment, Hartshorn and Judge St. Clair engaged in the following dialogue:

> **Judge St. Clair:** Mr. Hartshorn did you get a copy of the information in these three cases that describes the charges?
>
> **Hartshorn:** Yes, I did.
>
> **Judge St. Clair:** Did you read the informations?
>
> **Hartshorn:** Yeah, I did.
>
> **Judge St. Clair:** You have the right to have me read them to you out loud here in court. Would you like me to read them?
>
> **Hartshorn:** No, sir.

Unlike in *Henderson,* Hartshorn was advised by the specific language of the amended information that intent was a required element of grand theft. Consequently, his *Alford* plea was made voluntarily, knowingly and intelligently.

B. Motion to Reconsider

Hartshorn filed an objection to the Court's September 20, 2007, Memorandum Decision Re: Motions for Credit for Time Served. This Court assumes Hartshorn intends his objection as a motion for reconsideration. In support of his Motion for Credit for

Time Served, Hartshorn cites *State v. Hernandez,* 120 Idaho 785, 820P.2d 380, for the proposition that a defendant who receives credit for time served on one charge should be credited with an equal amount of time served on all other charges being served concurrently with the first charge. Hartshorn states:

> If all sentences are running concurrent except for the escape charge, shouldn't I get 321 days jail credit on all charges that run concurrent to my original sentence? The consecutive one year fixed for escape with 113 days to begin after the original sentence imposed is how it should be.

Aff. of Defendant at attachment #2. Hartshorn appears to be arguing that he should receive 321 days credit on Cases No. CR-06-17236 and CR-06-19594.

The Idaho Court of Appeals addressed this issue in *State v. Vasquez,* 142 Idaho 67, 122 P.3d 1167 (Ct. App. 2005). In *Vasquez,* the defendant was arrested for possession of a controlled substance in Payette County. One month later, Vasquez was served with an arrest warrant from Washington County while still incarcerated in Payette County. Vasquez was sentenced in Payette County on July 10, 2003. On the same day, Vasquez was transported to Washington County and arraigned on the charges pending against him there. He was sentenced in Washington County on August 11, 2003. The Washington County sentences were ordered to run concurrently with the Payette County sentence. Vasquez received credit for the thirty-two days he served in Washington County on the Washington County sentence. He filed a motion for credit for time served arguing that because the sentences were ordered to run concurrently, he was entitled to prejudgment credit on his Washington County sentence for the time served in Payette County.

The court in *Vasquez* stated:

> The award of credit for time served is governed by I.C. § 18-309 which provides in part:
>
> > In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered.
>
> The statute's phrase "if such incarceration was for the offense or an included offense for which the judgment was entered" means that the right to credit is conferred only if the prejudgment incarceration is a consequence of or attributable to the charge or conduct for which the sentence is imposed. *State v. Horn,* 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct.App.1993); *Hale,* 116 Idaho at 765, 779 P.2d at 440. Thus, there must be a causal effect between the offense and the incarceration in order for the incarceration to be "for" the offense, as the term is used in I.C. § 18-309.

Id. at 68, 122 P.3d at 1168.

The *Vasquez* court distinguished *Hernandez*, explaining:

> There is a distinction between the defendant in *Hernandez* and the defendant in *Horn* and Vasquez, namely that Hernandez was charged in one county under one multi-count indictment, whereas Vasquez and Horn were charged for crimes in different counties on separate complaints for unrelated acts. When charges are concurrently filed, the prejudgment incarceration is caused by each charge. On the other hand, when the charges are not concurrently filed but rather brought by different complaints for unrelated charges in separate counties, the incarceration is not a consequence of all charges even if the sentences are subsequently ordered to run concurrently. In short, a defendant wrongfully receives duplicative credit for prejudgment incarceration when the incarceration is credited to each concurrent sentence but is attributable to only one charge and not the other.
>
> . . .
>
> . . . [T]he fact that Vasquez was given the benefit of concurrent sentences does not mean that he gets the additional benefit of prejudgment incarceration attributable to a completely separate crime committed in another county.

Id. at 69, 122 P.3d at 1169.

In this case, Hartshorn pled guilty and was sentenced on four unrelated charges. His prejudgment incarceration in Cases No. CR-06-17236 and CR-06-19594 was not related to his prejudgment incarceration in Case No. CR-06-5769. The Court gave Hartshorn the benefit of allowing him to serve his time for the three separate cases concurrently. Hartshorn is not, however, entitled to apply the credit he received for time served only under Case No. CR-06-5769 to Cases No. CR-06-17236 and CR-06-19594.

Hartshorn also argues *Vasquez* is distinguishable from his case because Vasquez was charged in different counties, whereas he was charged only in Bonneville County.

Hartshorn misinterprets *Vasquez.* The focus of the court's holding in *Vasquez* was that a defendant does not receive the benefit of credit for time served on concurrent sentences when his prejudgment incarceration for one of the charges was "attributable to a completely separate crime." The fact Vasquez's charges were filed in separate counties is not relevant. The fact the charges in Hartshorn's cases were brought by different complaints and for unrelated charges provides the basis for application of the *Vasquez* decision in this action.

The Court's September 20, 2007, memorandum decision correctly denied Hartshorn's motions for credit for time served. Hartshorn's motion for reconsideration should be denied.

IV. CONCLUSION

Hartshorn's motion to withdraw *Alford* plea should be denied.

Hartshorn's motion for reconsideration should be denied.

DATED this 20th day of March 2008.

Gregory S. Anderson

GREGORY S. ANDERSON
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March 2008, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Curtis Glenn Hartshorn
ISCI Unit 14
Post Office Box 14
Boise, ID 83707

Bonneville County Prosecutor's Office
605 N. Capital Ave.
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By _____
Deputy Clerk

In the Supreme Court of the State of Idaho

STATE OF IDAHO, Plaintiff-Respondent, v. CURTIS GLENN HARTSHORN, Defendant-Appellant.	)	ORDER GRANTING MOTION TO AUGMENT RECORD AND KEEP SUSPENSION OF BRIEFING SCHEDULE IN PLACE Supreme Court Docket No. 33914-2007 (33915-2007/33916-2007/33917-2007) Bonneville County District Court Nos. 2006-5769 (2006-14327/ 2006-17236/2006-19594)

A MOTION TO AUGMENT RECORD AND MOTION TO KEEP SUSPENSION OF BRIEFING SCHEDULE IN PLACE with attachment was filed by counsel for Appellant on November 24, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT RECORD be, and hereby is, GRANTED and the District Court Reporter shall prepare and lodge the transcript listed below with this Court within twenty-eight (28) days of the date of this Order and the District Court Clerk shall immediately serve counsel and file the transcript with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the February 12, 2008, hearing on Appellant's Motion to Withdraw his plea in Bonneville County Case No. CR-2006-19594.

IT FURTHER IS ORDERED that the augmentation record shall include the documents listed below, items which were NOT submitted with this Motion and not contained in this record on appeal, and the District Court Clerk shall submit to this Court the requested documents at the same time as the transcript listed above:

1. Court Minutes from the February 12, 2008, hearing on Appellant's Motion to Withdraw his plea in Bonneville County Case No. CR-2006-19594; and
2. The district court's March 20, 2008, Memorandum Decision denying Appellant's Motion to Withdraw his plea in Bonneville County Case No. CR-2006-19594.

IT FURTHER IS ORDERED that proceedings in this appeal shall remain SUSPENDED until the transcript and the requested documents listed above are filed with this Court, at which time the due date for filing Appellant's Brief shall be reset.

DATED this 12th day of January 2009.

For the Supreme Court

Stephen Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Jack Fuller
Court Reporter Tom McMinn

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2006-19594
	)	
-vs-	)	MINUTE ENTRY
	)	
CURTIS GLENN HARTSHORN,	)	
	)	
Defendant.	)	
	)	

This matter came on for hearing on defendant's Objection & Verified Motion for Disqualification with Cause and Motion to Withdraw Alford Plea on February 12, 2008 at 9:30 A.M., before the Honorable Gregory S. Anderson, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Karen Konvalinka, Court Reporter, and Ms. Lettie Messick, Deputy Court Clerk, were present.

Mr. Randolph Neal appeared on behalf of the State.

The defendant appeared by telephone on his own behalf.

The Court noted that the defendant's motion for disqualification was resolved.

Mr. Hartshorn presented argument supporting his request for credit for time served. Mr. Neal argued in opposition to defendant's request for credit. Mr. Hartshorn presented additional argument supporting the motion.

The Court took the matter under advisement.

Mr. Hartshorn presented argument supporting his motion to withdraw his guilty plea. Mr.

Neal argued in opposition to defendant's motion. Mr. Hartshorn presented additional argument supporting defendant's motion to withdraw guilty plea.

The Court took the matter under advisement.

Court was thus adjourned.

Gregory S. Anderson

GREGORY S. ANDERSON
District Judge

c: Prosecutor
Curtis Hartshorn

THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO, Plaintiff, -vs.- CURTIS GLENN HARTSHORN, Defendant.	Case No. CR-06-19594 **MEMORANDUM DECISION RE: MOTION TO WITHDRAW *ALFORD* PLEA AND OBJECTION TO MEMORANDUM DECISION**

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 18, 2006, Curtis Hartshorn was sentenced in Cases No. CR-2006-5769 for delivery of a controlled substance, CR-2006-14327 for escape, CR-2006-17236 for issuing a check without funds and CR-2006-19594 for grand theft. Each case is unrelated to the others.

In Case No. CR-2006-5769, the court revoked probation and imposed the original sentence of a three-year determinate term followed by an indeterminate term of seven years. The sentence is subject to 321 days credit for time served prior to sentencing.

In Case No. CR-2006-14327, the court sentenced Hartshorn to a one-year determinate term to be served consecutively to the sentence in Case No. CR-2006-5769. The sentence is subject to 113 days credit for time served prior to sentencing.

In Case No. CR-2006-17236, the Court sentenced Hartshorn to a determinate term of three years to be served concurrently with the sentence in Case No. CR-2006-5769. The sentence is subject to 113 days credit for time served prior to sentencing.

In Case No. CR-2006-19594, the Court sentenced Hartshorn to a minimum term of four years to be followed by an indeterminate term of eight years. The sentence is to

be served concurrently with the sentences in Cases No. CR-2006-5769 and CR-2006-17236. The sentence is subject to 113 days credit for time served prior to sentencing.

On September 13, 2007, Hartshorn filed an identical motion for credit for time served in each of the listed cases.

On September 20, 2007, the court entered a Memorandum Decision Re: Motions for Credit for Time Served, which denied Hartshorn's motions.

Hartshorn filed a Motion to Withdraw *Alford* Plea on October 1, 2007.

On October 16, 2007, Hartshorn filed an Objection and Verified Motion for Disqualification W/Cause objecting to the September 20, 2007, Memorandum Decision.[1]

II. STANDARD OF ADJUDICATION

A. Motion to Withdraw *Alford* Plea

The decision to grant or deny a motion to withdraw a guilty plea rests in the discretion of the trial court. *State v. Dye,* 124 Idaho 250, 253, 858 P.2d 789, 792 (Ct. App. 1993).

B. Motion to Reconsider

"The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." *Jordan v. Beeks,* 135 Idaho 586, 592, 21 P.3d 908, 914 (2001); *Carnell v. Barker Management, Inc.,* 137 Idaho 322, 329, 48 P.3d 651, 658 (2002).

[1] An Order for Self Disqualification was entered on October 3, 2007 by Judge Tingey. On October 10, 2007, Judge Anderson was assigned this case. Consequently, Hartshorn's Motion for Disqualification is moot and need not be addressed in this decision. Hartshorn's Objection appears to be a motion for reconsideration and will be handled as such by this Court.

III. DISCUSSION

A. Motion to Withdraw *Alford* Plea

Rule 33(c) of the Idaho Criminal Rules provides:

> Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; *but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.*

(Emphasis added).

1. Voluntarily, knowingly and intelligently

a. Voluntary Plea

Hartshorn argues his *Alford* plea was not voluntarily entered. He states: "The defendant stated several times that he wasn't guilty of the charge of grand theft. The plea was not made voluntary and the defendant didn't have the full understanding of nature of the act." M. to Withdraw *Alford* Plea at 2. He also states: "The defendant was not told by counsel the severity of the consequences of being sentenced that day." M. to Withdraw *Alford* Plea at continued page 3.

"Manifest injustice will be found if the plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be entered voluntarily, knowingly, and intelligently." *State v. Huffman,* 137 Idaho 886, 887, 55 P.3d 879, 880 (Ct. App. 2002). The defendant bears the burden of demonstrating he should be allowed to withdraw the plea. *State v. Dye,* 124 Idaho 250, 254, 858 P.2d 789, 793 (Ct. App. 1993).

The Idaho Court of Appeals has explained:

> Before accepting a guilty plea, the trial court must satisfy itself that the plea is offered voluntarily, knowingly and intelligently. The plea must be entered with "a full understanding of what the plea connotes and of its consequence." In Idaho, the trial court must follow the minimum requirements of I.C.R. 11(c) in accepting pleas of guilty. *If the record indicates the trial court followed the requirements of I.C.R. 11(c), this is a prima facie showing that the plea is voluntary and knowing. The defendant then has the burden of persuasion to demonstrate a manifest injustice by establishing that the plea was induced by misapprehension, inadvertence or ignorance.*

State v. Hayes, 138 Idaho 761, 765, 69 P.3d 181, 185 (Ct. App. 2003) (emphasis added).

Rule 11(c) of the Idaho Criminal Rules provides:

> Acceptance of Plea of Guilty. Before a plea of guilty is accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:
>
> (1) The voluntariness of the plea.
>
> (2) The defendant was informed of the consequences of the plea, including minimum and maximum punishments, and other direct consequences which may apply.
>
> (3) The defendant was advised that by pleading guilty the defendant would waive the right against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses against the defendant.
>
> (4) The defendant was informed of the nature of the charge against the defendant.
>
> (5) Whether any promises have been made to the defendant, or whether the plea is a result of any plea bargaining agreement, and if so, the nature of the agreement and that the defendant was informed that the court is not bound by any promises or recommendation from either party as to punishment.

During the December 4, 2006, arraignment, the Court participated in the following dialogue with Hartshorn and his attorney, Jeromy Stafford:

Judge St. Clair: And in the 19594 case, you're charged with grand theft in count one and aggravated assault in count two. If you're convicted of the grand theft, you could be sentenced from one to fourteen years in prison, fined up to $5,000 and required to pay restitution. If you're convicted of count two, you could be sentenced up to five years in prison, $5,000 fine and restitution. All of these may require a contribution of $50 to the victim's relief fund. And if you're convicted of more than one count the sentences could be consecutive. Do you understand those potential penalties for conviction of any of these charges in these cases?

Hartshorn: Yes, I do.

. . .

Judge St. Clair: Mr. Hartshorn did you get a copy of the information in these three cases that describes the charges?

Hartshorn: Yes, I did.

Judge St. Clair: Did you read the informations?

Hartshorn: Yeah, I did.

Judge St. Clair: You have the right to have me read them to you out loud here in court. Would you like me to read them?

Hartshorn: No, sir.

. . .

Judge St. Clair: And in Case 19594 how do you plead to grand theft Mr. Hartshorn?

Hartshorn: Guilty.

Judge St. Clair: And the state is going to dismiss Ag Assault, is that right?

Larren Covert: Yes, your honor.

Judge St. Clair: We'll put it down a not guilty plea in that charge. So did you read and sign this plea agreement Mr. Hartshorn?

Hartshorn: Yes, I did.

Judge St. Clair: Did you read it?

Hartshorn: Yes.

Judge St. Clair: Do you understand it?

Hartshorn: Yes.

Judge St. Clair: Do you have any questions?

Hartshorn: No.

Judge St. Clair: This has a sentencing recommendation that the sentences be concurrent except the escape which must be consecutive and that the state would recommend six months fixed on escape. Do you understand that?

Hartshorn: Yes, I do.

Judge St. Clair: Do you understand that the state's recommendation as to sentencing would not be binding on me as to the proper punishment in these three cases?

Hartshorn: Yes.

Judge St. Clair: You understand that if I did not go along with the state's recommendation and gave you more severe sentences, you could not withdraw your guilty pleas and go to trial?

Hartshorn: Yes sir, I do.

. . .

Judge St. Clair: Mr. Hartshorn, are you on probation or parole?

Hartshorn: Yes, I am.

Judge St. Clair: Do you understand that a conviction in any of these cases would be a violation of that probation or parole?

Hartshorn: Yes, sir.

Judge St. Clair: Do you understand that you could have your parole revoked and your probation revoked as a result of more convictions in these cases?

Hartshorn: Yes, sir.

Judge St. Clair: Are you under the influence of any alcohol or any drugs at this time?

Hartshorn: No.

Judge St. Clair: Do you have mental or psychological problems that have a bearing on these cases?

Hartshorn: No.

Judge St. Clair: Did anybody pressure you into entering into any plea agreement?

Hartshorn: No.

Judge St. Clair: Are you pleading guilty freely and voluntarily?

Hartshorn: Yes.

Judge St. Clair: Is anybody forcing you to plead guilty?

Hartshorn: No.

Judge St. Clair: Did anybody promise you I would be easy on you if you pleaded guilty?

Hartshorn: No, sir.

Judge St. Clair: Did anybody promise you I would put you on probation if you pleaded guilty?

Hartshorn: No.

Judge St. Clair: Did anybody threaten you or people close to you to make you plead guilty?

Hartshorn: No.

Judge St. Clair: Other than the plea agreement, did anyone offer you any rewards of any kind?

Hartshorn: No, sir.

Judge St. Clair: Are you pleading guilty to these crimes based on your own free will and without pressure or influence from anybody whatsoever?

Hartshorn: Yes, sir.

Judge St. Clair: Do you understand that before sentencing I will have a pre-sentencing investigation completed resulting in a written report with your prior criminal record.

Hartshorn: Yes.

Judge St. Clair: Do you understand I will consider that at time of sentencing?

Hartshorn: Yes.

Judge St. Clair: Do you understand that by pleading guilty to these crimes you are giving up several very important constitutional rights, including the right to a jury trial on each of these crimes? The right to confront and cross-examine the state's witnesses and the right to call your own witnesses under oath?

Hartshorn: Yes.

Judge St. Clair: Do you understand you will have to give up your privilege against self-incrimination and give me the factual basis of these three crimes?

Hartshorn: Yes.

Judge St. Clair: Do you still wish to plead guilty?

Hartshorn: Yes, I do.

. . .

Judge St. Clair: Alright, then I find that you do understand the nature of these three crimes to which you have pleaded guilty. I find that you understand the consequences of these guilty pleas. I find there is a factual basis for each of the three guilty pleas. I find that they were freely and voluntarily made. I will accept the three guilty pleas. . . .

Transcribed by Court.

The plea agreement, signed by Hartshorn, stated:

> c. I understand that the crime of Grand Theft is a Felony, and is punishable as follows:

i. Imprisonment in the county jail for a term up to fourteen years;

ii. A fine of not more than five thousand dollars ($5,000);

iii. Restitution; or

iv. Any combination of fine, imprisonment, and restitution as listed above.

Plea Agreement at 3.

During the arraignment, Judge St. Clair complied with all the requirements of I.C.R. 11(c). The Court's dialogue with Hartshorn during the arraignment provides a prima facie showing that Hartshorn's *Alford* plea was voluntarily, knowingly, and intelligently made. Hartshorn acknowledged in the plea agreement that he was aware of the maximum sentence for Grand Theft. Hartshorn has not submitted any evidence that would indicate his plea was induced by misapprehension, inadvertence or ignorance. Therefore, Hartshorn has not rebutted the prima facie showing that his *Alford* plea was voluntarily, knowingly and intelligently made.

b. Persistent Violator Charge

Hartshorn appears to argue his *Alford* plea was coerced. He states: "The defendant, in the above mentioned cause, after pre-trial discussions with the defense lawyer and prosecuter, was told that if he didn't plead guilty to grand theft he was to be charged with the persistent violator." M. to Withdraw *Alford* Plea at 2.

In *Stone v. State,* 108 Idaho 822, 824-25, 702 P.2d 860, 862-63 (Ct. App. 1985), the Idaho Court of Appeals held:

> Stone . . . alleges that the prosecutor threatened to charge Stone as an habitual offender and represented that an additional twenty-six counts could be filed in federal court if he did not plead guilty. Stone, however,

> does not allege that these additional charges were groundless, only that they were not filed. It is clear from the record that Stone was aware his prior felony convictions made it possible for him to be charged by the state as a persistent violator and to receive a life sentence. *See* I.C. § 19-2514. He thus does not contend that the prosecutor's conduct was fraudulent. A prosecutor is at liberty to use the availability of filing additional, legitimate charges as a bargaining chip in plea negotiations. "A guilty plea induced by a prosecutorial ... promise to refrain from filing additional charges does not necessarily vitiate an otherwise voluntary plea." *State v. Swindell,* 93 Wash.2d 192, 607 P.2d 852, 855 (1980). "Defendants advised by competent counsel and protected by other procedural safeguards are presumptively capable of intelligent choice in response to prosecutorial persuasion, and unlikely to be driven to false self-condemnation." *Bordenkircher v. Hayes,* 434 U.S. 357, 363, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978). Stone admits his counsel was present when the "threats" were made. He does not allege any other facts which would cast a shadow on the voluntariness of his guilty plea. Stone was thus "presumptively capable of intelligent choice in response to prosecutorial persuasion." He has therefore not alleged facts which, even if true, would entitle him to relief. *See* Cooper v. State, supra.

The Idaho Court of Appeals has also stated:

> [T]here is a certain amount of coercion inherent in charging a defendant and bringing him before the court to declare his guilt or innocence. During plea bargaining, there is little chance of constitutionally excessive coercion, however, so long as the defendant is free to accept or reject the prosecutor's offers.

Garzee v. State, 126 Idaho 396, 399, 883 P.2d 1088, 1091 (Ct. App. 1994).

The prosecutor in this case was free to use the "threat" of a persistent violator charge as a persuasive tool when negotiating the plea bargain with Hartshorn. Hartshorn was represented by counsel and protected by various procedural safeguards. He was free to accept or reject the prosecutor's offers. Hartshorn's *Alford* plea is, therefore, presumed to have been entered voluntarily.

2. Factual basis inquiry

Hartshorn argues the court's acceptance of his plea was improper because the court "did not inquire fully to the facts of the charge." M. to Withdraw *Alford* Plea at

continued page 2.

The Idaho Court of Appeals has explained that with an *Alford* plea, not only must the plea be voluntarily, knowingly and intelligently made, but a fourth requirement must also be met:

> [A]n accused may voluntarily consent to the imposition of a prison sentence despite a professed belief in his or her innocence, as long as a factual basis for the plea is demonstrated by the state, and the accused clearly expresses a desire to enter such a plea. In Idaho, there is no general obligation to inquire into the factual basis of a guilty plea. However, such an inquiry should be made if an *Alford* plea is accepted, or if the court receives information before sentencing which raises an obvious doubt as to guilt.

Amerson v. State, 119 Idaho 994, 996, 812 P.2d 301, 303 (Ct. App. 1991) (citations omitted).

During the December 4, 2006, arraignment, the Court inquired into the factual basis of the grand theft charge against Hartshorn:

> **Judge St. Clair:** And how about the last case—this grand theft charge. What happened there?
>
> **Hartshorn:** I had my business. It was when I first started my business. A guy that was working with me; I needed to get some stuff off the internet and sell them. Supposedly his girlfriend's mother, which I've never met her, got a debit card. I paid 330 or 350 bucks. Ordered what I needed to order and that was all it was used. I got burglarized and we thought that that was stolen too. The card was supposed to have been just used the one time and then I was told it wasn't any good after that. Well, anyway I had it in my safe and they stole my safe, so I figured that was gone with it. Later when we moved out of the shop I found it. I put it in my wallet and that's where it's been. I don't know. I've been in and out of jail four or five times in the last year and nobody ever said anything until this time.

Stafford: Your honor, on this one we should probably do *Alford*. I think. He's disputing that he stole it, but the owner of the card is claiming that she didn't give him permission that to use it or have it so it's kind of a factual dispute. I think he's agreeing to plead guilty for the benefits of this plea agreement, getting the other charges dismissed, and due to the risk at trial with her coming in and saying that he didn't have permission to have it.

Judge St. Clair: Is that right Mr. Hartshorn?

Hartshorn: Yes, sir.

Judge St. Clair: And so you think that this Cheryl Beverland that she would be testifying against you with respect to this particular card?

Hartshorn: I guess so. She said it happened a year ago. It's been more like two-and-a-half years ago.

Judge St. Clair: But you had it? You had her card in your wallet?

Hartshorn: Yes, I did.

Judge St. Clair: When you were here in Idaho Falls, Idaho?

Hartshorn: Yes.

Judge St. Clair: On October 26, 2006?

Hartshorn: Yes.

Judge St. Clair: You didn't have any permission from her to have her card in your wallet?

Hartshorn: No.

Transcribed by Court.

The Court's inquiry into the factual basis for the grand theft charge against Hartshorn was sufficient to establish a basis for Hartshorn's *Alford* plea.

3. Specific Intent

Hartshorn argues he was never "told that the state had the burden of proving intent." M. to Withdraw *Alford* Plea at continued page 3. He cites *State v. Henderson*,

113 Idaho 411, 744 P.2d 795 (Ct. App. 1987), in support of his argument that he should have been informed that the state had the burden of proving intent. In *Henderson*, the defendant argued the trial court erred when it denied his motion to withdraw guilty plea. Henderson based his motion to withdraw guilty plea on the grounds he had not been informed, prior to entering the guilty plea, that the state needed to prove specific intent as an element of grand theft. The Court of Appeals stated:

> Before accepting a guilty plea, the court must satisfy itself that the plea is offered voluntarily, knowingly and intelligently. I.C.R. 11(c); *Fowler v. State*, 109 Idaho 1002, 712 P.2d 703 (Ct.App.1985). A voluntary plea cannot be made without disclosure to the accused of the intent element of a specific intent crime. *Sparrow v. State*, 102 Idaho 60, 625 P.2d 414 (1981); *Fowler v. State, supra*; *State v. Vasquez*, 107 Idaho 1052, 695 P.2d 437 (Ct.App.1985).
>
> We must examine the record of the proceedings at which the guilty plea was taken and the record of prior proceedings to determine whether the accused was adequately informed of the specific intent element. . . .
>
> . . .
>
> . . . Grand theft is a specific intent crime. . . .
>
> . . .
>
> As we have shown, the information itself did not specifically mention an intent to deprive or an intent to defraud. It did not allege that Henderson knew or had reason to know that the cashier's checks were false and forged and would not be paid when presented. Nothing in the record shows that, when the guilty plea was entered, Henderson had been told that if the case went to trial the state would have to prove the specific intent and knowledge required for a conviction under this statute. What Henderson's trial counsel may have told Henderson about elements of proof or possible defenses is not shown.

Id. at 412-413, 744 P.2d at 796-97. The court held Henderson must be permitted to withdraw his guilty plea.

In this case, the State filed an amended information accusing Hartshorn of Grand Theft on November 28, 2006. The amended information reads:

> **COUNT I, GRAND THEFT, Felony**
> **I.C. §§ 18-2403, 18-2407(1)(b)3**
>
> The defendant, CURTIS GLENN HARTSHORN, on or about October 26, 2006, in Bonneville County, State of Idaho, did wrongfully take, obtain, or withhold a financial transaction card from the owner, Cheryl Beverland, with the intent to deprive the owner of such property or to appropriate the same to himself. *(14 years, $5,000 fine, and restitution.)*

(Underlined emphasis added).

During the December 4, 2006, arraignment, Hartshorn and Judge St. Clair engaged in the following dialogue:

> **Judge St. Clair:** Mr. Hartshorn did you get a copy of the information in these three cases that describes the charges?
>
> **Hartshorn:** Yes, I did.
>
> **Judge St. Clair:** Did you read the informations?
>
> **Hartshorn:** Yeah, I did.
>
> **Judge St. Clair:** You have the right to have me read them to you out loud here in court. Would you like me to read them?
>
> **Hartshorn:** No, sir.

Unlike in *Henderson,* Hartshorn was advised by the specific language of the amended information that intent was a required element of grand theft. Consequently, his *Alford* plea was made voluntarily, knowingly and intelligently.

B. Motion to Reconsider

Hartshorn filed an objection to the Court's September 20, 2007, Memorandum Decision Re: Motions for Credit for Time Served. This Court assumes Hartshorn intends his objection as a motion for reconsideration. In support of his Motion for Credit for

Time Served, Hartshorn cites *State v. Hernandez,* 120 Idaho 785, 820P.2d 380, for the proposition that a defendant who receives credit for time served on one charge should be credited with an equal amount of time served on all other charges being served concurrently with the first charge. Hartshorn states:

> If all sentences are running concurrent except for the escape charge, shouldn't I get 321 days jail credit on all charges that run concurrent to my original sentence? The consecutive one year fixed for escape with 113 days to begin after the original sentence imposed is how it should be.

Aff. of Defendant at attachment #2. Hartshorn appears to be arguing that he should receive 321 days credit on Cases No. CR-06-17236 and CR-06-19594.

The Idaho Court of Appeals addressed this issue in *State v. Vasquez,* 142 Idaho 67, 122 P.3d 1167 (Ct. App. 2005). In *Vasquez,* the defendant was arrested for possession of a controlled substance in Payette County. One month later, Vasquez was served with an arrest warrant from Washington County while still incarcerated in Payette County. Vasquez was sentenced in Payette County on July 10, 2003. On the same day, Vasquez was transported to Washington County and arraigned on the charges pending against him there. He was sentenced in Washington County on August 11, 2003. The Washington County sentences were ordered to run concurrently with the Payette County sentence. Vasquez received credit for the thirty-two days he served in Washington County on the Washington County sentence. He filed a motion for credit for time served arguing that because the sentences were ordered to run concurrently, he was entitled to prejudgment credit on his Washington County sentence for the time served in Payette County.

The court in *Vasquez* stated:

> The award of credit for time served is governed by I.C. § 18-309 which provides in part:
>
> > In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered.
>
> The statute's phrase "if such incarceration was for the offense or an included offense for which the judgment was entered" means that the right to credit is conferred only if the prejudgment incarceration is a consequence of or attributable to the charge or conduct for which the sentence is imposed. *State v. Horn,* 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct.App.1993); *Hale,* 116 Idaho at 765, 779 P.2d at 440. Thus, there must be a causal effect between the offense and the incarceration in order for the incarceration to be "for" the offense, as the term is used in I.C. § 18-309.

Id. at 68, 122 P.3d at 1168.

The *Vasquez* court distinguished *Hernandez*, explaining:

> There is a distinction between the defendant in *Hernandez* and the defendant in *Horn* and Vasquez, namely that Hernandez was charged in one county under one multi-count indictment, whereas Vasquez and Horn were charged for crimes in different counties on separate complaints for unrelated acts. When charges are concurrently filed, the prejudgment incarceration is caused by each charge. On the other hand, when the charges are not concurrently filed but rather brought by different complaints for unrelated charges in separate counties, the incarceration is not a consequence of all charges even if the sentences are subsequently ordered to run concurrently. In short, a defendant wrongfully receives duplicative credit for prejudgment incarceration when the incarceration is credited to each concurrent sentence but is attributable to only one charge and not the other.
>
> . . .
>
> . . . [T]he fact that Vasquez was given the benefit of concurrent sentences does not mean that he gets the additional benefit of prejudgment incarceration attributable to a completely separate crime committed in another county.

Id. at 69, 122 P.3d at 1169.

In this case, Hartshorn pled guilty and was sentenced on four unrelated charges. His prejudgment incarceration in Cases No. CR-06-17236 and CR-06-19594 was not related to his prejudgment incarceration in Case No. CR-06-5769. The Court gave Hartshorn the benefit of allowing him to serve his time for the three separate cases concurrently. Hartshorn is not, however, entitled to apply the credit he received for time served only under Case No. CR-06-5769 to Cases No. CR-06-17236 and CR-06-19594.

Hartshorn also argues *Vasquez* is distinguishable from his case because Vasquez was charged in different counties, whereas he was charged only in Bonneville County.

Hartshorn misinterprets *Vasquez*. The focus of the court's holding in *Vasquez* was that a defendant does not receive the benefit of credit for time served on concurrent sentences when his prejudgment incarceration for one of the charges was "attributable to a completely separate crime." The fact Vasquez's charges were filed in separate counties is not relevant. The fact the charges in Hartshorn's cases were brought by different complaints and for unrelated charges provides the basis for application of the *Vasquez* decision in this action.

The Court's September 20, 2007, memorandum decision correctly denied Hartshorn's motions for credit for time served. Hartshorn's motion for reconsideration should be denied.

IV. CONCLUSION

Hartshorn's motion to withdraw *Alford* plea should be denied.

Hartshorn's motion for reconsideration should be denied.

DATED this 20th day of March 2008.

Gregory S. Anderson

GREGORY S. ANDERSON
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March 2008. I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Curtis Glenn Hartshorn
ISCI Unit 14
Post Office Box 14
Boise, ID 83707

Bonneville County Prosecutor's Office
605 N. Capital Ave.
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By _____
Deputy Clerk